

**DEPARTMENT OF STATE REVENUE**

**SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 02-0049PSLOF**

**Sales and Use Tax**

**Calendar Years 1998, 1999, and 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is a manufacturer and a contractor. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items. Taxpayer's prior audit, completed on October 2, 1992, allowed a penalty waiver. Taxpayer failed to charge sales tax to several customers for whom no exemption certificates could be obtained. Taxpayer also failed to accrue use tax on clearly taxable items such as maintenance supplies, janitorial supplies, smoke detectors, office furniture, and other miscellaneous items. Taxpayer was given credit in the audit for items it erroneously self-assessed use tax.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer, at hearing states that there is a discrepancy regarding the seventy-seven percent underpayment in sales tax because it paid tax on purchases that were credited in the audit report.

The taxpayer states that it did not fail to remit sales tax on seventy-seven percent (77%) of its taxable sales but accrued and paid use tax; therefore the statement is misleading. The hearing officer reassigned the over accrued use tax to the sales tax column to reduce the percentage. The result was that the sales were still underpaid by \$10,009 or fifty-one percent (51%) in 1998 and \$7,704 or seventy-three percent (73%) in 2000. The movement of the overpaid accounts from purchases to sales increased the purchases from (\$19,292) to \$1,823 in 1998, from (\$14,212) to \$20,151 in 1999, and from \$17,217 to \$25,587 in 2000 thereby also increasing the percentage where tax was not paid upon taxable purchases. Overall the taxpayer failed to remit 10.5% in

1998 and 22% in 2000. A prior audit waived the penalty because the taxpayer paid more than 99% of the tax due which is not true for the current audit. As stated in the first Letter of Findings, the department gave credit where the taxpayer erroneously self-assessed use tax upon materials billed on a lump sum basis to tax-exempt customers which was in the amount of \$63,847 in use tax. Taxpayer made other errors and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.